CF0000060892

CA 691/96 (Q)

High Court of Madhya Pradesh
JABALPUR
4 APR 1996
Reg. No. 196
Recept Clerk
High Court, Jabalpur

XII-189 / (Jail)
C. J. P. R. 11/94/2,000

APPEAL OF PRISONER

No. 3574/51 Name કેશરી

Father's name લાલમાં ખાકિલ કુલી કુસા આની ઘુડે ચંદાન

Residence જિલ્લા રાજનાંદગાંવ (મ.પ્ર.) Age ૨૭ વર્ષ

Sentenced to આજીવન કારાવાસ એવં દંડ On 1/3/96

Under section ૩૦૨ ના. દં. વિ. by અતિરિક્ત સત્રન્યાયાધીશ રાજનાંદગાંવ (મ.પ્ર.)

Division Bench (Criminal)

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 1/3/96

2 Date on which copy received 3/3/96

3 Date on which Appeal sent 3/9/96

4 Whether the prisoner wishes to be represented or ~~not~~ - Yes / No

No. 3574/51 Name કેશરી બાઇ લાલમાં

Confined in કેન્દ્રીય Jail રાયપુર (મ.પ્ર.)

No. 291 / Law / Dated 20/3/96 1996

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ અતિરિક્ત સત્રન્યાયાધીશ રાજનાંદગાંવ (મ.પ્ર.) togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

સેલબલ નિર્ણય પરિનિધિ
ખાસ પ્રકરણ ક્રમાંક 114/95

Superintendent
Jail (M.P.)

Date of receipt in office

Date of receipt record to accompany the

Memo of Appeal to the Appellate court

No Dated 199

Forwarded to the

Date of receipt in Appellate Court

(P. T. O.)

(13)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.App. No. 691/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -
HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. V.K. SHRIVASTAVA, JJ.

20-12-2005

Smt. Kiran Jain, Advocate for the appellant.

Shri Alok Bakshi, Government Advocate for the State.

Oral judgment.

By this criminal appeal, accused Ferha has questioned the legality of judgment of conviction & sentence dated 1.3.1996 passed by learned Additional Sessions Judge, Khairagarh in Sessions Trial No.114/95, whereby learned Additional Sessions Judge after holding the accused guilty for commission of offence under Section 302 of the Indian Penal Code sentenced him to undergo rigorous imprisonment for life.

The prosecution case, in brief, is that on 26.01.1995 at about 7.00 a.m. deceased Latmaar Lodhi- father of accused Ferha went to Kothar for tying the bullocks. As the deceased Latmaar ousted his son Ferha from the house 3-4 days prior to the date of incident, therefore, accused Ferha was sitting in the Kothar since the night of 25.1.1995 and the moment Latmaar entered Kothar, accused Ferha attacked Latmaar on his neck & head with the axe and committed his murder. Just after the incident, Babulal (PW-1) & Santosh (PW-2) saw accused Ferha coming out of the Kothar carrying the blood stained axe

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

in his hand. Babulal (PW-1) lodged the report in the Police Station Chhuikhadan at about 11.00 a.m. On receiving this information, the Station House Officer after registering the F.I.R. (Ex.P-1) left for the scene of occurrence, prepared the site plan under Ex.P-2 & Ex.P-3 and after giving notice (Ex.P-6) to the Panchaas prepared the Panchanama (Ex.P-7) of the body of deceased Latmaar. He also took into possession the blood stained soil and plain soil from the place of occurrence under Ex.P-5 and one axe from the garden of Shiv Kumar under Ex.P-4. Clothes of accused/appellant were taken into possession under Ex.P-10 and clothes of deceased Latmaar were taken into possession under Ex.P-11. Dead body of Latmaar was sent for postmortem examination to the Primary Health Centre Chhuikhadaan, where Dr. M.G. Tiwari (PW-8) conducted the postmortem on the body of deceased and prepared the post mortem report Ex.P-13 in which he had opined that the cause of death was haemorrhage shock due to multiple injuries. Recovered articles were sent for examination to Forensic Science Laboratory, Raipur from where the report Ex.P-15 was received.

After completion of the investigation, charge sheet was filed in the Court of learned Judicial Magistrate, 1st Class, Khairagarh, who in turn committed the case to learned Sessions Judge, Rajnandgaon from where learned Additional Sessions Judge, Khairagarh has received the case on transfer for trial.

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The prosecution in order to establish the charge against the accused Ferha examined nine witnesses. Statement of accused Ferha was recorded under Section 313 of the Cr.P.C. by learned Additional Sessions Judge in which he denied the prosecution evidence and stated that he has been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing the Additional Public Prosecutor and counsel for the accused convicted and sentenced the accused Ferha in the manner as mentioned in Para-1 of this judgment.

We have heard learned counsel for the accused/appellant Smt. Kiran Jain and learned Government Advocate for the State Shri Alok Bakshi.

The fact of homicidal nature of death of Latmaar has not been disputed by counsel for the accused/appellant. Apart from that, from the evidence of PW-1 Babulal, PW-2 Santosh as also the medical evidence of PW-8 Dr. M.G. Tiwari in which he has stated that there were 11 lacerated wounds on the various parts of the body of deceased. On dissection, the right internal jugular vein and right carotid artery were found cut. PW-8 opined that the injuries were anti-mortem in nature, cause of death was shock due to haemorrhage on account of cutting of right internal jugular vein and right carotid artery and the

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

death was homicidal in nature. Therefore, in view of the above it is established that death of Latmaar was homicidal in nature.

As far as the involvement of accused/appellant in crime in question is concerned, there is no direct and ocular evidence in this case and the whole case rests upon the circumstantial evidence i.e.;

i. Evidence of PW-1 Babulal & PW-2 Santosh saw the accused/appellant coming out of the Kothar at the time of offence, carrying the blood stained axe in his hand.

ii. Extrajudicial confession made by the accused/appellant before PW-3 Jagdish & PW-4 Fuduk Ram.

iii. Weapon of offence i.e. axe was recovered under Ex.P-4 from the garden of Shivkumar where the accused had thrown it.

In order to convict an accused based on the circumstantial evidence, the Hon'ble Apex Court in the matter of **Dhananjoy Chatterjee Vs. State of W.B.** reported in **(1994) 2 SCC 220** has held that;

> "In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

Now, we shall proceed to scrutinize the evidence, which has been adduced by the prosecution, as to whether the prosecution has been able to establish the charge against the accused/appellant based on the circumstantial evidence in view of the principle laid down by the Hon'ble Apex Court in the above judgment;

As far as Point No.1 is concerned, learned counsel for the accused/appellant argued that evidence of PW-1 Babulal & PW-2 Santosh is to the effect that they saw the accused near the place of occurrence carrying the blood stained axe in his hand, therefore, they were not the eyewitnesses to the incident and there was every

[पीछे देखिये .

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

possibility that any third person may have committed the crime in question.

PW-1 Babulal has stated in his evidence that in the morning of 26.1.1995 he went to Kothar for tying the bullocks. Thereafter he went towards the drain and when he was returning from there, he heard the cries of Latmaar from the side of Kothar and saw that the accused/appellant herein was coming out of the Kothar carrying axe in his hand and same was stained with blood. Thereafter accused Ferha ran away and while running away he threw the said axe in the garden of Shivkumar. He chased him but could not catch him and thereafter, he entered the Kothar and saw the body of Latmaar in a pool of blood, then he went to call the Kotwar of Village and by that time number of persons collected in the Kothar. Thereafter, he along with Kotwar went the Police Station Chuikhadaan to lodge the report. When he was chasing accused Ferha, Santosh also came from the front and he saw him. PW-2 Santosh has corroborated the evidence of this witness and stated that he saw the accused Ferha running away in the morning of 26.1.1995 at about 7.00 a.m. and he was carrying axe in his hand, which was stained with red colour and same was thrown by him in the garden of Shivkumar. It is true that these witnesses had not seen the accused while attacking Latmaar, but the evidence of these witnesses is

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

admissible under Section 6 of the Indian Evidence Act, which envisages that " *facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.*" The fact in issue was that Latmaar was murdered by attacking him and as per doctor evidence as many as 11 lacerated wounds were found on his body, mandible was found fractured, even the right internal jugular vein and right carotid artery were found cut. The accused/appellant was seen by PW-1 Babulal coming out of the Kothar carrying the blood stained axe in his hand, even Babulal (PW-1) chased him while he was running away and threw the axe in the garden of Shivkumar and the body of Latmaar, who is father of accused, was lying in the Kothar. PW-2 Santosh also saw the accused running from the place of occurrence. Therefore, the evidence of these two witnesses is relevant under Section 6 of the Evidence Act in connecting the accused/appellant with the crime in question. Nothing has been elicited in the cross-examination of these two witnesses to the effect that their evidence is unreliable or untrustworthy.

As far as Point No.2 regarding making of extrajudicial confession by the accused/appellant before PW-3 Jagdish & PW-4 Fuduk Ram is concerned , learned counsel for the accused/appellant argued that as

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —9—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

per evidence of PW-3 Jagdish the distance between Kulikkasa, where Latmaar was attacked and Baghmarra, where this witness was present is about 12-15 kilometers and therefore, the evidence of this witness to the effect that about 8.00 a.m. in the morning accused Ferha came and made extrajudicial confession before him is not correct, because it is not possible for anyone to cover such a distance within one hour and as such, evidence of this witness does not inspire the confidence. Second point argued by learned counsel for the accused/appellant is that PW-3 Jagdish has stated that the accused/appellant made extrajudicial confession before him in the Baghmarra school, whereas, PW-4 Fuduk has stated in his evidence that accused Ferha has made extrajudicial confession in front of the house of Jagdish (PW-3). Jagdish (PW-3) has stated in examination-in-chief that on 26.1.1994 at about 8.00 a.m. in morning he was in the school of Baghmarra for the purpose of unfurling the national flag, at that time accused Ferha came to him and stated that he has committed murder of his father with axe. Thereafter, he and Khujiram went to Kulikasa on a cycle and saw the body of Latmaar in the Kothar. Blood was present on the body of deceased, there were injuries also on the head of Latmaar and after the performance of last rites he came back to his house. PW-4 Fuduk has stated in his evidence that on 26.1.1995 accused Ferha was telling Jagdish (PW-3) that he has murdered his father with the axe, then

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

-5-

this witness has said to the accused that when you have murdered your father then how you could be of anybody. On this, he asked his nephew Jagdish to take the accused, on which Jagdish went along with few persons to send Ferha to Kulikasa. In the cross-examination, this witness has stated that accused Ferha made extrajudicial confession before them at about 8-9 p.m. in the night. The accused said these words when they were sitting in front of the house of Jagdish (PW-3). He has further stated that Latmaar was his relative.

As far as the first argument advanced by learned counsel for the accused/appellant that looking to the distance between Village Baghmarra & Kulikasa it was not possible for the accused to reach Bagmarrha in such a short time is concerned, after perusing the evidence, we do not find any substance in this argument, for the reason, that the time which was mentioned by these two witnesses has been mentioned approximately, they have not stated about the exact time, which is evident from the cross-examination of PW-4 Fuduk that time was 8 to 9 a.m. Similarly, the time of occurrence is given as 7.00 a.m., but there is no evidence that exact time was mentioned after seeing the watch. PW-3 Jagdish has stated that normally it takes one hour to reach Kulikasa from Baghmarra and it is incorrect to say that it takes two hours, the distance is also given approximately and therefore, on

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

this ground the evidence of these two witnesses cannot be disbelieved. Similarly, as far as the making of extrajudicial confession in the school and in front of the house of Jagdish (PW-3) is concerned, it is just possible that the accused must have made extrajudicial confession firstly in the school and thereafter in front of the house of Jagdish. Moreover, it has not come on the record that what is the distance between the school and house of Jagdish. In the cross-examination of these two witnesses, nothing could be elicited that these witnesses had any animosity or grudge against the accused/appellant that made them to implicate the accused in a false case. Moreover, whatever has been stated by these two witnesses regarding extrajudicial confession made by the accused/appellant stands corroborated by the fact that the accused/appellant was seen while running from the Kothar, where he attacked his father Latmaar and he was seen running away by PW-1 Babulal & PW-2 Santosh. As Latmaar was his relative, therefore, there was occasion to come to him and made extrajudicial confession. Therefore, the evidence of these two witnesses lands corroboration from the evidence of PW-1 & PW-2.

Now coming to the Point No.3. PW-1 Babulal & PW-2 Santosh have stated in their evidence that they saw the accused/appellant coming out of the Kothar carrying the blood stained axe in his hand and

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

while running away he threw that axe in the garden of Shivkumar, from where the axe was recovered under Ex.P-4 by the Investigating Officer Shri Sanjay Pundhir (PW-9) and the same has been proved by this witness in Para-5 of the evidence where he has stated that he took into possession the axe from the garden of Shivkumar under Ex.P-4 and same was stained with blood. The axe was sent to Forensic Science Laboratory, Raipur for examination and as per FSL report (Ex.P-15) axe was found stained with blood. Learned counsel for the accused/appellant argued that there is no serologist report to show that the blood, which was found on the axe was human blood and that too of the same blood group of the deceased. It is true that if the whole case rests on the recovery of weapon of offence only, then before connecting the accused in a crime based on the weapon of offence stained with blood, it is always safe to ensure that the blood, which was found on the weapon of offence, must be of the same group of the deceased. But, in this case the whole case is not resting only on the recovery of the weapon of offence, there is other evidence that the accused/appellant was seen running away from the Kothar where the dead body of Latmaar was found in the pool of blood and thereafter, he made extrajudicial confession before PW-3 Jagdish & PW-4 Fuduk. Even PW-1 Babulal & PW-2 Santosh had saw that the accused was throwing the axe in the garden of Shivkumar from where

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

that axe was recovered under Ex.P-4 by PW-9 Sanjay Pundhir. Therefore, the recovery of axe stained with blood and other evidence of the case connects the accused with the crime in question.

Now if we examine the above three points that accused/appellant was seen running away out of the Kothar just after the commission of crime i.e. murder of Latmaar, carrying the axe in his hand and the conduct of the accused was such that when he was running, PW-1 Babulal tried to chase him and caught him, but he could not catch him and accused ran away and the said axe was thrown by him in the garden of Shivkumar. Thereafter, accused/appellant made extrajudicial confession before the PW-3 & PW-4 regarding commission of murder of his father Latmaar with the axe and said axe was recovered from the place where the witnesses i.e. PW-1 & PW-2 saw that the accused is throwing the axe and same found stained with blood. Therefore, the chain of circumstances stands completed and based on that the accused/appellant has rightly been held guilty for commission of crime in question and evidence adduced in this case stood up to the tests laid down by the Hon'ble Apex Court in the above judgment.

Learned counsel for the accused/appellant argued that as there is no evidence that injuries which were found on the body of deceased Latmaar were sufficient to cause death in the ordinary course of

(25)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

nature, therefore, the accused/appellant cannot be held guilty for commission of crime under Section 302 of the IPC.

It is true that in the ordinary course the doctor ought to have opined that injuries, which were found on the body of deceased, were sufficient to cause death in the ordinary course of nature. But, from the medical evidence available on record i.e. injury report and post mortem report, the Court can also ascertain from looking to the nature of injuries that whether these injuries were sufficient to cause death in the ordinary course of nature. From perusal of the postmortem report and evidence of Dr. M.G. Tiwari (PW-8) it is evident that following injuries were found on the body of deceased Latmaar:-

i. Lacerated wound in the size of $4\frac{1}{2}$ "x 1"x $2\frac{1}{2}$ " on the neck oblique in nature.

ii. Lacerated wound in the size of 1.5"x1"x $\frac{1}{2}$"oblical in the centre of the neck and wind pipe was cut.

iii. Lacerated wound in the size of 1.5"x$\frac{1}{2}$"x$\frac{1}{2}$" on the collar bone.

iv. Lacerated wound in the size of 1"x$\frac{1}{2}$"x$\frac{1}{2}$" on the back side of throat.

v. Lacerated wound in the size of $\frac{1}{2}$"x$\frac{1}{2}$"x$\frac{1}{2}$" on the rear side of right ear.

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

vi. Lacerated wound in the size of 1"x½"x¼" in the centre of the right ear.

vii. Lacerated wound in the size of 1"x4x¼" 4" above the right side of the collar bone.

viii. Lacerated wound in the size of 1"x½"x¼" on the left ear.

ix. Lacerated wound in the size of 2"x1½"x½" on the left parietal region.

x. Lacerated wound in the size of 1½"x1"x¼" on the left occipital region.

xi. The mandible was found fractured and further evidence of the doctor (PW-8) is that on opening of the body the right internal jugular vein and right carotid artery were found cut.

In view of the above injuries, it can safely be inferred that when the wind pipe was found cut, right internal jugular vein and right carotid artery were found cut and there were numerous lacerated wounds on almost all the parts of head & neck of the deceased and the doctor has stated that on account of cut of right internal jugular vein and right carotid artery the death was caused, these injuries were sufficient in ordinary course of nature to cause death and as such we do not find any substance in the argument of learned counsel for the accused.

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -15-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Looking to the nature of the injuries, the parts of body where it was caused and the weapon of offence used by the accused/appellant, it can safely be inferred that the intention of e accused/appellant was to cause death of his father Latmaar, therefore, the finding of the trial court convicting the accused/appellant under Section 302 is based on the legal evidence and same does not require any interference by this Court.

In the result, the appeal is liable to be dismissed being devoid of any merit and same is dismissed.

Sd/-
V.K. Shrivatava
Judge

Sd/-
L.C. Bhadoo
Judge

Roshan/-

[पीछे देखिये

10.4.08